

PEPPER HAMILTON, LLP  
 Harry P. Weitzel (CA BAR NO. 149934)  
 weitzelh@pepperlaw.com  
 4 Park Plaza, Suite 1200  
 Irvine, California 92614-5955  
 Telephone: (949) 567-3500  
 Facsimile: (949) 521-9101

William D. Belanger (MA Bar No. 657184)  
 belangerw@pepperlaw.com  
 James M. Wodarski (MA Bar No. 627036)  
 wodarskj@pepperlaw.com  
 Matthew D. Durell (GA Bar No. 142061)  
 durellm@pepperlaw.com  
 Frank D. Liu (MA Bar No. 675431)  
 liuf@pepperlaw.com  
*All admitted pro hac vice*  
 125 High Street  
 19th Floor, High Street Tower  
 Boston, Massachusetts 02110  
 Telephone: (617) 204-5100  
 Facsimile: (617) 204-5150

Attorneys for Plaintiff  
 NAZOMI COMMUNICATIONS, INC.

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

Nazomi Communications, Inc.,  
  
 Plaintiff,  
  
 v.  
  
 Nokia Corp., et al.  
  
 Defendants.

Case No. 5:10-cv-4686-RMW

Nazomi Communications, Inc.,  
  
 Plaintiff,  
  
 v.  
  
 Samsung Telecommunications America, LLC,  
 et al.  
  
 Defendants.

Case No. 5:10-cv-5545-RMW

**[] STIPULATED SUPPLEMENTAL PROTECTIVE ORDER GOVERNING  
DISCOVERY OF NON-PARTY ORACLE AMERICA, INC.'S MATERIAL**

WHEREAS, designation and treatment of confidential information is governed by the parties' Agreed Protective Order in *Nazomi I (Nazomi Communications, Inc., v. Nokia Corp., et al., 5:10-cv-4686-RMW)* and the Court's Patent Local Rule 2-2 Interim Model Protective Order in *Nazomi II (Nazomi Communications, Inc. v. Samsung Telecommunications America, LLC, et al., 5:10-cv-5545-RMW)*,

WHEREAS, non-party Oracle and Defendants have been asked to produce Oracle confidential materials in both *Nazomi I* and *Nazomi II*,

WHEREAS, non-party Oracle seeks consistent treatment of Oracle confidential information produced in *Nazomi I* and *Nazomi II* and agrees that the Court may enter the following Supplemental Protective Order in both cases to provide additional protection for Oracle confidential information produced by Oracle or any party in *Nazomi I* or *Nazomi II*,

Accordingly, hereinafter documents or source code produced or submitted by non-party Oracle or Defendants in connection with the above-captioned matters that are designated as "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY" and "ORACLE - OUTSIDE ATTORNEYS EYES' ONLY –SOURCE CODE" shall be subject to the following restrictions:

**A. Definitions**

1. "Party": any party to this Litigation (i.e., *Nazomi I* and *Nazomi II*), including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2. "Material": all information, documents, source code, schematics, testimony, and things generated, produced, served, or otherwise provided in this Litigation by Oracle and Designated Material produced by any Defendant in this Litigation.

3. "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY" Material: information, documents, and things Oracle believes in good faith is not generally known to others, and that

1 Oracle (i) would not normally reveal to third parties except in confidence, or has undertaken with  
 2 others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy  
 3 under federal or state law, or any other applicable privilege or right related to confidentiality or  
 4 privacy.

5 4. "Source Code": includes human-readable programming language text that defines  
 6 software, firmware (collectively "software Source Code") and integrated circuits ("hardware  
 7 Source Code"). Text files containing Source Code shall hereinafter be referred to as "Source  
 8 Code files." Software Source Code files include, but are not limited to files containing Source  
 9 Code in "C", "C++", BREW, Java ME, J2ME, assembler, digital signal processor (DSP)  
 10 programming languages, and other human readable text programming languages. Software  
 11 Source Code files further include ".include files," "make" files, "link" files, and other human-  
 12 readable text files used in the generation and/or building of software directly executed on a  
 13 microprocessor, micro-controller, or DSP. Hardware Source Code files include, but are not  
 14 limited to files containing Source Code in VHDL, Verilog, and other Hardware Description  
 15 Language ("HDL") formats, including but not limited to, Register Transfer Level ("RTL")  
 16 descriptions.

17 5. "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE"  
 18 Material: Source Code that Oracle believes in good faith is not generally known to others, and  
 19 has significant competitive value to Oracle such that unrestricted disclosure to others would  
 20 create a substantial risk of serious injury, and that Oracle would not normally reveal to third  
 21 parties except in confidence, or has undertaken with others to maintain in confidence.

22 6. "Receiving Party": a Party that receives Designated Material.

23 7. "Designated Material": Material that is designated "ORACLE - OUTSIDE  
 24 ATTORNEYS' EYES ONLY," or "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY -  
 25 SOURCE CODE" under this Order.

26 8. "Counsel of Record": (i) outside counsel who appears on the pleadings as counsel  
 27 for a Party, (ii) partners, principals, counsel, associates, employees and contract attorneys of such  
 28 outside counsel to whom it is reasonably necessary to disclose the information for this Litigation,

1 including supporting personnel employed by the attorneys, such as paralegals, legal translators,  
 2 legal secretaries, legal clerks and shorthand reporters, and/or (iii) independent legal translators  
 3 retained to translate in connection with this Litigation, or independent shorthand reporters  
 4 retained to record and transcribe testimony in connection with this Litigation.

5 9. "Outside Consultant": a person with specialized knowledge or experience in a  
 6 matter pertinent to the Litigation who has been retained by Counsel of Record to serve as an  
 7 expert witness, or as a litigation consultant in this Litigation, and who is not a current employee  
 8 of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to  
 9 become an employee of, or a non-litigation consultant of: 1) a Party, 2) a competitor of a Party,  
 10 or 3) a competitor of Oracle.

11 10. "Professional Vendors": persons or entities that provide litigation support services  
 12 (e.g., photocopying; videotaping; translating; designing and preparing exhibits, graphics, or  
 13 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their  
 14 employees and subcontractors who have been retained by Counsel of Record in this Litigation,  
 15 and who are not current employees of a Party or of a competitor of a Party and who, at the time of  
 16 retention, are not anticipated to become employees of: 1) a Party, 2) a competitor of a Party, or 3)  
 17 a competitor of Oracle. This definition includes ESI vendors, professional jury or trial  
 18 consultants retained in connection with this Litigation retained by such consultants to assist them  
 19 in their work. Professional vendors do not include consultants who fall within the definition of  
 20 Outside Consultant.

## 21 **B. Scope**

22 11. The protections conferred by this Order cover not only Designated Material (as  
 23 defined above), but also any information copied or extracted therefrom, as well as all copies,  
 24 excerpts, summaries, or compilations thereof. Nothing herein shall alter or change in any way the  
 25 discovery provisions of the Federal Rules of Civil Procedure or any applicable local rules or  
 26 General Orders. Identification of any individual pursuant to this Supplemental Protective Order  
 27 does not make that individual available for deposition, or any other form of discovery outside of  
 28

the restrictions and procedures of the Federal Rules of Civil Procedure or any applicable local rules or General Orders.

**C. Access To Designated Material**

12. Access to “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” Material: Unless otherwise ordered by the United States District Court for the Northern District of California or permitted in writing by Oracle, a Receiving Party may disclose any information, document or thing designated “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” only to:

- a) Persons who appear on the face of Designated Material as an author, addressee or recipient thereof;
- b) Counsel of Record;
- c) Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this Litigation, and who have, after the date of this Supplemental Protective Order, signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B, and qualified for receiving Designated Materials under the procedures specified in Paragraphs 18 and 19;
- d) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B, as well as any of the arbitrator’s or mediator’s staff who have also signed Exhibits A and B;
- e) Court reporters and videographers employed in connection with this Litigation; and
- f) Professional Vendors to whom disclosure is reasonably necessary for this Litigation, and a representative of which has signed the

“Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, subject to the following exception: Designated Material shall not be disclosed to mock jurors without Oracle’s express written consent.

g) The Court and its personnel.

13. Access to “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” Material: Unless otherwise ordered by the United States District Court for the Northern District of California or permitted in writing by Oracle, a Receiving Party may disclose any information, document or thing designated “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” only to:

a) Persons who appear on the face of Designated Material as an author, addressee or recipient thereof;

b) Counsel of Record;

c) Outside Consultants of the Receiving Party to whom disclosure is reasonably necessary for this Litigation, and who have signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B, and qualified for receiving Designated Materials under the procedures specified in Paragraphs 18 and 19;

d) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who have signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A; and the “Certification of Consultant” attached hereto as Exhibit B provided, however, that before such disclosure, Oracle is provided notice including: (a) the individual’s name and business title; (b) business address; (c) business or professions; and (d) the individual’s CV. Oracle shall have five

(5) business days from receipt of the notice to object in writing to such disclosure (plus three (3) extra days if notice is given other than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5-days (plus 3-days, if appropriate) period, if no objection has been asserted, then “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY-SOURCE CODE” materials may be disclosed pursuant to the terms of this Supplemental Protective Order;

e) Court reporters and videographers employed in connection with this Litigation, subject to the provisions provided in paragraph E.20.f herein; and

f) Professional Vendors to whom disclosure is reasonably necessary for this Litigation, and a representative of which has signed the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached hereto as Exhibit A, subject to the following exception: Designated Material shall not be disclosed to mock jurors without Oracle’s express written consent.

g) The Court and its personnel.

14. Absent an order from the United States District Court for the Northern District of California or agreement of Oracle, Designated Material may not be disclosed to employees of a Receiving Party (unless produced by that Receiving Party), including its in-house attorneys and support staff.

15. Receiving Party may host “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” Material only on either 1) any system inside the firewall of a law firm representing the Receiving Party, or 2) inside the system of a professional ESI Vendor retained by Counsel of Record of the Receiving Party. “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” Material also cannot be sent or transmitted to any person, location, or vendor outside of the United States except to Counsel of Record and Outside Consultants designated in subparagraph c above. To the extent that any “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” Material is transmitted from or

1 to authorized recipients outside of the Receiving Party's Outside Counsel's office, or outside of  
 2 the ESI Vendor's system, the transmission shall be by hand (and encrypted if in electronic  
 3 format), by a secure transport carrier (e.g., Federal Express), or by encrypted electronic means.

4 16. Each person to whom Designated Material may be disclosed, and who is required to  
 5 sign the "Acknowledgement and Agreement To Be Bound By Supplemental Protective Order"  
 6 attached hereto as Exhibit A and, if applicable, the "Certification Of Consultant" attached hereto  
 7 as Exhibit B, shall do so, prior to the time such Designated Material is disclosed to him or her.  
 8 Counsel for the Receiving Party who makes any disclosure of Designated Material shall retain  
 9 each original executed certificate and, upon written request, shall provide copies to counsel for  
 10 Oracle at the termination of this Litigation.

11 17. Absent written permission from Oracle, persons not permitted access to Designated  
 12 Material under the terms of this Supplemental Protective Order shall not be present at depositions  
 13 while Designated Material is discussed or otherwise disclosed. Pre-trial and trial proceedings  
 14 shall be conducted in a manner, subject to the supervision of the United States District Court for  
 15 the Northern District of California, to protect Designated Material from disclosure to persons not  
 16 authorized to have access to such Material. Any Party intending to disclose confidential  
 17 information from Designated Material at pretrial or trial proceedings must give advanced notice  
 18 to assure the implementation of the terms of this Supplemental Protective Order.

19 **D. Access By Outside Consultants**

20 18. Notice. If a Receiving Party wishes to disclose Designated Material to any Outside  
 21 Consultant, such Receiving Party must provide notice to counsel for Oracle, which notice shall  
 22 include: (a) the individual's name, business title, country(ies) of citizenship, and country of  
 23 residence; (b) business address; (c) business or profession; (d) the individual's CV; (e) any  
 24 previous or current relationship (personal or professional) with any of the parties; (f) a list of  
 25 other cases in which the individual has testified (at trial or deposition) within the last six years;  
 26 (g) a list of all companies with which the individual has consulted or by which the individual has  
 27 been employed within the last four years including the dates of the consulting or employment and  
 28 a brief description of the subject matter of the consultancy or employment; and (h) a signed copy



of the “Acknowledgement and Agreement To Be Bound By Supplemental Protective Order” attached as Exhibit A, and the “Certification Of Consultant” attached hereto as Exhibit B.;

19. Objections. Oracle shall have five (5) business days from receipt of the notice specified in Paragraph 18 to object in writing to such disclosure (plus three (3) extra days if notice is given other than by hand delivery, e-mail delivery or facsimile transmission). After the expiration of the 5-day (plus 3-days, if appropriate) period, if no objection has been asserted, then Designated Material may be disclosed to the Outside Consultant pursuant to the terms of this Supplemental Protective Order. Any objection by Oracle must set forth in detail the grounds on which it is based. Should the Receiving Party disagree with the basis for the objection(s), the Receiving Party must first attempt to resolve the objection(s) informally with Oracle. If the informal efforts do not resolve the dispute within five (5) business days, the Receiving Party may file a motion requesting that the objection(s) be quashed after that five (5) day period has passed. Oracle shall have the burden of proof by a preponderance of the evidence on the issue of the sufficiency of the objection(s). Pending a ruling by the United States District Court for the Northern District of California upon any such objection(s), the discovery material shall not be disclosed to the person objected to by Oracle.

**E. Production of ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE Material**

20. Oracle’s Source Code:

- a) To the extent that Oracle or Defendants make Oracle’s Source Code available for inspection, Oracle or the producing Defendant(s) shall make all relevant and properly requested Oracle Source Code available electronically and in text searchable form (1) if produced by Oracle, in a secure room at a secure facility selected by Oracle or, (2) if produced by Defendants, at the offices of outside counsel for the producing Defendant, which shall be in either the Northern District of California or Washington, D.C. Nokia may produce Oracle source code in its possession, custody, or control at the office of its outside counsel in New York City. Oracle shall

1 make the Source Code available for inspection on a stand-alone, non-  
2 networked personal computer running a reasonably current version of the  
3 Microsoft Windows operating system (“Source Code Computer”). The  
4 Source Code Computer shall be configured to permit review of the Source  
5 Code through a password-protected account having read-only access. The  
6 Receiving Party may use appropriate tool software on the Source Code  
7 Computer, which shall be installed by Oracle, including at least one text  
8 editor like Visual Slick Edit that is capable of printing out Source Code  
9 with page and/or line numbers and at least one multi-file text search tool  
10 such as “grep.” Should it be necessary, other mutually agreed upon tools  
11 may be used. Licensed copies of other mutually agreed upon tool software  
12 shall be installed on the Source Code Computer by Oracle, and paid for by  
13 the Receiving Party.

14 b) Oracle shall provide access to the Source Code Computer during the  
15 normal operating hours of the secure facility during a reasonable number of  
16 days appropriate for the review by the Receiving Party.

17 c) The Source Code Computer shall be equipped to print copies of the Source  
18 Code on watermarked pre-Bates numbered paper, which shall be provided  
19 by Oracle. Under no circumstances are original printouts of the Source  
20 Code to be made except for directly onto the watermarked and numbered  
21 sides of the paper provided by Oracle. Additionally, the Receiving Party  
22 shall not print any continuous block of Source Code that results in more  
23 than 40 printed pages. Counsel for Oracle will keep the original printouts,  
24 and shall provide copies of such original printouts to counsel for the  
25 Receiving Party within 48 hours of being notified that such original  
26 printouts have been made. Counsel for the Receiving Party may request up  
27 to 10 copies of each original printout of Source Code. No more than 10%  
28 or 500 pages of the total Source Code (whichever is less, and not including

1 copies of original printouts) for any software release (or in the case of  
2 hardware Source Code, for any hardware product), and no continuous  
3 blocks of Source Code that exceed 40 pages may be in printed form at any  
4 one time, and all printed Source Code shall be logged by the Receiving  
5 Party as noted in paragraph h below. If necessary, the Receiving Party may  
6 request to print additional pages in excess of the 10% or 500 pages of total  
7 Source Code for a software release or a hardware product, or continuous  
8 blocks of Source Code that exceed 40 pages, which request Oracle shall not  
9 unreasonably deny. No additional electronic copies of the Source Code  
10 shall be provided by Oracle. Hard copies of the Source Code also may not  
11 be converted into an electronic document, and may not be scanned using  
12 optical character recognition (“OCR”) technology. The Receiving Party  
13 shall not print Source Code in order to review the Source Code elsewhere  
14 in the first instance, i.e., as an alternative to reviewing that Source Code  
15 electronically on the Source Code Computer, as the parties acknowledge  
16 and agree that the purpose of the protections herein would be frustrated by  
17 printing portions of the Source Code for review and analysis in the first  
18 instance elsewhere.

19 d) The Receiving Party is prohibited from bringing outside electronic devices,  
20 including but not limited to laptops, floppy drives, zip drives, or other  
21 hardware into the secure room. Nor shall any cellular telephones, personal  
22 digital assistants (PDAs), Blackberries, cameras, voice recorders,  
23 Dictaphones, telephone jacks or other devices be permitted inside the  
24 secure room.

25 e) If any individual inspecting Oracle’s Source Code seeks to take notes, all  
26 such notes will be taken on bound (spiral or other type of permanently  
27 bound) notebooks. No loose paper or other paper that can be used in a  
28 printer may be brought into the secure room.

- 1 f) Where absolutely necessary or required by the United States District Court  
2 for the Northern District of California, a Receiving Party may make further  
3 copies of original Source Code printouts to be included in pleadings filed  
4 under seal, to be included as exhibits in expert reports, or to be used as  
5 exhibits in depositions, where such pleadings, expert reports, and  
6 transcripts from such depositions are designated "ORACLE - OUTSIDE  
7 ATTORNEYS' EYES ONLY – SOURCE CODE". In the event copies of  
8 Source Code printouts are used as exhibits in a deposition, the printouts  
9 shall not be provided to the court reporter and further copies of the original  
10 Source Code printouts made for the deposition shall be either destroyed or  
11 provided to counsel for the Receiving Party or Oracle at the conclusion of  
12 the deposition.
- 13 g) In addition to other reasonable steps to maintain the security and  
14 confidentiality of Oracle Source Code, printed copies of the Source Code  
15 maintained by the Receiving Party must be kept in a locked storage  
16 container when not being actively reviewed.
- 17 h) The Receiving Party's counsel shall keep a log that records the identity of  
18 each individual to whom each hard copy of the Source Code is provided  
19 and when it was provided to that person, and within thirty days after the  
20 issuance of a final, non-appealable decision resolving all issues in the  
21 Litigation, the Receiving Party must serve upon Oracle the log. In  
22 addition, any Outside Consultants of the Receiving Party to whom the  
23 paper copies of the Source Code were provided must certify in writing that  
24 all copies of the Source Code were returned to the counsel who provided  
25 them the information and that they will make no use of the Source Code, or  
26 of any knowledge gained from the Source Code, in any future endeavor.  
27  
28

**F. Financial Summaries**

21. For the mutual convenience of the parties, Oracle may produce certain financial summaries for the purpose of this Litigation. To the extent Oracle produces such financial summaries in a digital format (e.g., PDF, TIFF, Word, or Excel file), or to the extent a Receiving Party puts any such financial summary or the information from any such financial summary into a document in a digital format, the Receiving Party shall password protect that document on an encrypted media. To the extent that any such financial summaries are transmitted from or to authorized recipients outside of the Receiving Party's Outside Counsel's office, the transmission shall be by hand, by a secure transport carrier (e.g., Federal Express), or by encrypted electronic means.

**G. Prosecution and Development Bar**

22. Unless otherwise permitted in writing between Oracle and a Receiving Party, other than Outside Consultants as defined under Section 12.c. supra, any individual who personally receives, other than on behalf of Oracle, any material designated "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY" or "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" shall not participate in or be responsible for preparation or prosecution before a Patent Office of any patent, patent application, or for drafting or revising patent claims that are substantially related to the particular technology or information disclosed in the Designated Material, from the time of receipt of such material through and including the first to occur of (1) the complete resolution of this Litigation through entry of a final non-appealable judgment or order for which appeal has been exhausted and completion of the requirements of section 38, infra; (ii) the complete settlement of all claims in this Litigation and completion of the requirements of section 38, infra; (iii) the individual person(s) cease to represent the Receiving Party or respective client in this Litigation; or (iv) the individual person(s) cease to have access to any material designated "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY" or "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY SOURCE CODE."

23. Unless otherwise permitted in writing between Oracle and a Receiving Party, any expert consultant retained on behalf of Receiving Party who is to be given access to Oracle

documents or Source Code designated as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” must agree in writing not to perform hardware or software development work or product development work directly or indirectly intended for commercial purposes substantially related to the particular technology or information in the Designated Material, which is not publicly known, from the time of receipt of such material through and including the first to occur of (i) the date the expert consultant ceases to represent the Receiving Party or respective client in this case or (ii) the date the expert consultant ceases to have access to any material designated “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY - SOURCE CODE.”

#### **H. Use Of Designated Material**

24. Use Of Designated Material By Receiving Party. Unless otherwise ordered by the United States District Court for the Northern District of California, or agreed to in writing by Oracle, all Designated Material, and all information derived therefrom, shall be used by the Receiving Party only for purposes of this Litigation, and shall not be used in any other way, or for any other purpose, including the acquisition, preparation or prosecution before the Patent Office of any patent, patent application, for drafting or revising patent claims, or in connection with patent licensing or product development work directly or indirectly intended for commercial purposes substantially related to the particular technology or information disclosed in the Designated Material. Information contained or reflected in Designated Material shall not be disclosed in conversations, presentations by parties or counsel, in court or in other settings that might reveal Designated Material, except in accordance with the terms of this Order.

25. Use Of Designated Material By Oracle. Nothing in this Order shall limit Oracle’s use of its own documents and information, nor shall it prevent Oracle from disclosing its own confidential information, documents or things to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Order, so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

26. Use of Designated Material at Depositions. Except as may be otherwise ordered by the United States District Court for the Northern District of California, any person may be examined as a witness at depositions and trial, and may testify concerning all Designated Material of which such person has prior knowledge, without in any way limiting the generality of the following

- a) A witness testifying on behalf of Oracle pursuant to a subpoena may be examined concerning all Designated Material that has been produced by Oracle or any Defendant in the Litigation; and
- b) A former director, officer, agent and/or employee of Oracle may be interviewed, examined and may testify concerning all Designated Material of which he or she has prior knowledge, including any Designated Material that refers to matters of which the witness has personal knowledge, that has been produced by Oracle or any Defendant in the Litigation and that pertains to the period or periods of his or her employment.

27. Use of Designated Material at Hearing or Trial. The parties will give Oracle prior notice of, and an opportunity to object to, any intended use of the Designated Material at any hearing or trial in this case. Said notice shall (1) be served by facsimile or email on counsel for Oracle at least five (5) business days prior to the hearing or the first day of trial, (2) identify the Designated Material with specificity and (3) identify the measures the party intends to propose to the Court to protect the Designated Material when used at any hearing or trial consistent with this Supplemental Protective Order.

#### **I. Procedure for Designating Materials**

28. Subject to the limitations set forth in this Order, Oracle may: designate as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” information that it believes, in good faith, meets the definition set forth in Paragraph 3 above; and designate as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” information that it believes, in good faith, meets the definition set forth in Paragraph 5 above.



29. Except as provided above in Section E with respect to “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” Material, any material (including physical objects) made available by Oracle or any Defendant in the Litigation for initial inspection by counsel for the Receiving Party prior to producing copies of selected items shall initially be considered, as a whole, to constitute “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” information, and shall be subject to this Order. Thereafter, Oracle shall have ten (10) calendar days from the inspection to review and designate the appropriate documents as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” prior to furnishing copies to the Receiving Party.

30. Designation in conformity with this Order shall be made as follows:

- a) For information in documentary form (apart from transcripts of depositions, or other pretrial or trial proceedings), Oracle shall affix the legend “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” on each page that contains Designated Material.
- b) For testimony given in deposition, or in other pretrial or trial proceedings, Oracle shall specify any portions of the testimony that it wishes to designate as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY”, or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.” In the case of depositions, Oracle may also designate any portion of a deposition transcript as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY”, and/or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” by informing the reporter, and the Parties, in writing within thirty (30) calendar days of completion of the deposition of the designations to be applied. All deposition transcripts involving Designated Material and not marked at least “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” during the deposition will nonetheless be treated as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” until the thirty (30) day period has expired. Transcript pages containing Designated Material must be separately bound by the court reporter, who must affix to the top of



1 each such page the legend "ORACLE - OUTSIDE ATTORNEYS' EYES  
2 ONLY" and/or "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY –  
3 SOURCE CODE" as instructed by Oracle.

4 c) For information produced in some form other than documentary, and for  
5 any other tangible items, Oracle shall affix in a prominent place on the  
6 exterior of the container or containers in which the information or thing is  
7 stored the legend "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY"  
8 or "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE  
9 CODE".

10 d) The provisions of subparagraphs 29(a)-(c) do not apply to documents  
11 produced in native format. For documents produced in native format, the  
12 parties shall provide written notice to the Receiving Party of any  
13 confidentiality designations at the time of production.

14 **J. Waiver of Privilege**

15 31. Inspection or production of documents (including physical objects) shall not  
16 constitute a waiver of the attorney-client privilege, work product immunity, or any other  
17 applicable privilege or immunity, if, after Oracle becomes aware of any such disclosure, Oracle  
18 designates any such documents as within the attorney-client privilege, work product immunity or  
19 any other applicable privilege or immunity, and requests in writing return of such documents to  
20 Oracle. Upon request by Oracle, the Receiving Party shall immediately retrieve and return all  
21 copies of such document(s). Nothing herein shall prevent the Receiving Party from challenging  
22 the propriety of the attorney-client privilege, work product immunity or other applicable privilege  
23 or immunity designation by submitting a written challenge to the United States District Court for  
24 the Northern District of California; provided, however, that such challenge shall not assert as a  
25 ground for challenge the fact of the initial or inspection of the documents later designated as  
26 attorney-client privileged, work product, or subject to another applicable privilege or immunity.

**K. Inadvertent Failure To Designate**

32. An inadvertent failure to designate qualified information, documents or things as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” does not, standing alone, waive Oracle’s right to secure protection under this Order for such material. Upon discovery of an inadvertent failure to designate, Oracle may notify the Receiving Party in writing that the material is to be designated as “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”. Upon receipt of such notice, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the terms of this Order, subject to the right to challenge the propriety of such designation(s). Oracle shall provide substitute copies of documents bearing the confidentiality designation.

**L. Filing Designated Material**

33. Without written permission from Oracle or an Order from the United States District Court for the Northern District of California secured after appropriate notice to all interested persons, a Party may not file in the public record in this Litigation any Designated Material, but must move to file such Designated Material under seal in conformance with the rules and procedures of the United States District Court for the Northern District of California. If such a motion is filed by a Party, within the time specified in Northern District local rule 79-5(d), Oracle shall serve and file a declaration establishing that the Designated Material is sealable and lodge and serve a narrowly-tailored proposed sealing order, or withdraw the Designated Material’s confidentiality designation. Material served and lodged for filing under seal shall bear the title of this matter, an indication of the nature of the contents of such sealed filing, the words “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE”, as appropriate, and a statement substantially in the following form: “UNDER SEAL – SUBJECT TO PROTECTIVE ORDER – CONTAINS CONFIDENTIAL INFORMATION – TO BE OPENED ONLY BY OR AS DIRECTED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.” If the court grants the motion to seal, the moving Party shall file the Designated Material under seal

1 unless Oracle has given written permission to file the Designated Material in the public record. If  
 2 the Court denies the motion to seal, the moving Party shall be permitted to file the Designated  
 3 Material in the public record.

4 **M. Challenges to Confidentiality Designations**

5 34. Oracle and any Defendant in this Litigation producing Designated Material will use  
 6 reasonable care when designating documents or information as “ORACLE - OUTSIDE  
 7 ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY –  
 8 SOURCE CODE”. Nothing in this Order shall prevent a Receiving Party from contending that  
 9 any or all documents or information designated as “ORACLE - OUTSIDE ATTORNEYS’ EYES  
 10 ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” have been  
 11 improperly designated. A Receiving Party may, at any time, request that Oracle cancel or modify  
 12 the confidentiality designation with respect to any document or information contained therein.

13 35. A Receiving Party shall not be obligated to challenge the propriety of a “ORACLE -  
 14 OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES  
 15 ONLY – SOURCE CODE” designation at the time made, and the failure to do so shall not  
 16 preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on  
 17 counsel for Oracle, and shall identify particularly the documents or information that the  
 18 Receiving Party contends should be differently designated. The parties shall use their best efforts  
 19 to resolve promptly and informally such disputes in accordance with all applicable rules. If  
 20 agreement cannot be reached, the Receiving Party shall request that the United States District  
 21 Court for the Northern District of California cancel or modify a “ORACLE - OUTSIDE  
 22 ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES ONLY –  
 23 SOURCE CODE” designation.

24 **N. Designated Material Subpoenaed or Ordered Produced In Other Litigation**

25 36. If a Receiving Party is served with a subpoena or a court order that would compel  
 26 disclosure of any information, documents or things designated in this Litigation as “ORACLE -  
 27 OUTSIDE ATTORNEYS’ EYES ONLY” or “ORACLE - OUTSIDE ATTORNEYS’ EYES  
 28 ONLY – SOURCE CODE”, the Receiving Party must so notify Oracle, in writing (by fax and

email) promptly, and in no event more than ten (10) calendar days after receiving the subpoena or order. Such notification must include a copy of the subpoena or order. The Receiving Party also must immediately inform, in writing, the party who caused the subpoena or order to issue that some or all of the material covered by the subpoena or order is subject to this Supplemental Protective Order. In addition, the Receiving Party must deliver a copy of this Supplemental Protective Order promptly to the party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Supplemental Protective Order and to afford Oracle an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. Oracle shall bear the burdens and the expenses of seeking protection in that court of Designated Material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Litigation to disobey a lawful directive from another court.

**O. Unauthorized Disclosure Of Designated Material**

37. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Designated Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing Oracle of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Designated Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A. Nothing in these provisions should be construed as limiting Oracle’s right to seek remedies for a violation of this Order.

**P. Duration**

38. Even after the termination of this Litigation, the confidentiality obligations imposed by this Order shall remain in effect until Oracle agrees otherwise in writing or a court order otherwise directs. The Court shall retain jurisdiction to enforce the terms of this Supplemental Protective Order after the dismissal of the Litigation. Nazomi and Defendants agree that any order of dismissal of Nazomi I or Nazomi II as to any or all parties shall include a specific provision that the Court shall retain jurisdiction to enforce this Supplemental Protective Order

1 following dismissal. Nazomi, Defendants and any individual who receives any Designated  
2 Material consent to the personal jurisdiction of the Court for that purpose.

3 **Q. Final Disposition**

4 39. Unless otherwise ordered or agreed in writing by Oracle, within sixty (60) days of  
5 the termination of all of this Litigation, whether through settlement or final judgment (including  
6 any and all appeals therefrom), each Receiving Party, including outside counsel for each  
7 Receiving Party, will destroy all Material designated "ORACLE - OUTSIDE ATTORNEYS'  
8 EYES ONLY" and "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE"  
9 produced by Oracle or any Defendant in this Litigation, as well as all work product, pleadings,  
10 motion papers, legal memoranda, correspondence, trial transcripts and trial exhibits admitted into  
11 evidence containing information from Designated Material ("derivations") and all copies thereof,  
12 with the exception of copies stored on back up tapes or other disaster recovery media. Within  
13 sixty (60) days of the date of settlement or final judgment, each Receiving Party shall serve  
14 Oracle with a certification stating that it, including its outside counsel, has complied with its  
15 obligations under this paragraph. With respect to any copy of Oracle Designated Materials or  
16 derivation(s) thereof that remain on back-up tapes and other disaster storage media of a Receiving  
17 Party, neither the Receiving Party nor its consultants, experts, counsel or other party acting on its  
18 behalf shall make copies of any such information available to any person for any purpose other  
19 than backup or disaster recovery unless compelled by law and, in that event, only after thirty (30)  
20 days prior notice to Oracle or such shorter period as required by court order, subpoena, or  
21 applicable law.

22 **R. Miscellaneous**

23 40. Any of the notice requirements herein may be waived, in whole or in part, but only  
24 by a writing signed by the Counsel of Record for the Party or Oracle against whom such waiver  
25 will be effective.

26 41. This Order is entered without prejudice to the right of any Party or Oracle to apply  
27 to the United States District Court for the Northern District of California at any time for  
28 modification of this Order, when convenience or necessity requires. Nothing in this Order

1 abridges the right of any person to seek to assert other objections. No Party or Oracle waives any  
2 right it otherwise would have to object to disclosing or producing any information, documents, or  
3 things on any ground not addressed in this Supplemental Protective Order. Similarly, no Party or  
4 Oracle waives any right to object on any ground to the use in evidence of any of the material  
5 covered by this Supplemental Protective Order. The United States District Court for the Northern  
6 District of California shall take appropriate measures to protect Designated Material at trial and  
7 any hearing in this Litigation.

8 42. This Order shall not diminish any existing obligation or right with respect to  
9 Designated Material, nor shall it prevent a disclosure to which Oracle consents in writing before  
10 the disclosure takes place.

11 43. The United States District Court for the Northern District of California is  
12 responsible for the interpretation and enforcement of this Supplemental Protective Order. All  
13 disputes concerning Designated Material produced under the protection of this Supplemental  
14 Protective Order shall be resolved by the United States District Court for the Northern District of  
15 California. Every individual who receives any Designated Material agrees to subject himself or  
16 herself to the jurisdiction of the United States District Court for the Northern District of  
17 California for the purpose of any proceedings related to performance under, compliance with, or  
18 violation of this Order.

1  
2 Dated: July 10, 2012

MORRISON & FOERSTER LLP

3  
4 By: /s/ Marc Peters  
Marc Peters

5 Attorneys for non-party Oracle America, Inc.

6 Dated: July 10, 2012

PEPPER HAMILTON LLP

7  
8 By: /s/ Matthew D. Durell  
Matthew D. Durell

9 Attorneys for Plaintiff NAZOMI  
COMMUNICATIONS, INC.

10  
11 Dated: July 10, 2012

DLA Piper US LLP

12  
13 By: /s/ Erik Fuehrer  
Erik Fuehrer

14 Attorneys for Defendants  
15 SAMSUNG TELECOMMUNICATIONS  
16 AMERICA, LLC, SAMSUNG ELECTRONICS  
17 CO, LTD., and SAMSUNG ELECTRONICS  
AMERICA, INC.

18 Dated: July 10, 2012

MORGAN, LEWIS & BOCKIUS LLP

19 By: /s/ Nicholas Kim  
20 Nicholas Kim

21 Attorneys for Defendants  
22 LG ELECTRONICS, INC. and LG ELECTRONICS  
MOBILECOMM U.S.A.

23 Dated: July 10, 2012

KNOBBE, MARTENS, OLSON & BEAR LLP

24 By: /s/ Phillip Bennett  
25 Phillip Bennett

26 Attorneys for Defendants  
27 HTC CORPORATION and HTC AMERICA, INC.

1  
2 Dated: July 10, 2012

KATTEN MUCHIN ROSENMAN LLP

3  
4 By: /s/ Michael Dorfman  
Michael A. Dorfman

5 Attorneys for Defendant  
KYOCERA COMMUNICATIONS, INC.

6 Dated: July 10, 2012

GREENBERG TRAURIG LLP

7  
8 By: /s/ Anthony Matheny  
Anthony Matheny

9 Attorneys for Defendant  
10 AMAZON.COM, INC.

11 Dated: July 10, 2012

AKIN GUMP STRAUSS HAUER & FELD LLP

12 By: /s/ Joanna Kim  
Joanna Kim

13 Attorneys for Defendant VIZIO INC.

14 Dated: July 10, 2012

WILEY REIN LLP

15  
16 By: /s/ Kevin Anderson  
Kevin Anderson

17 Attorneys for Defendants WESTERN DIGITAL  
18 CORP., WESTERN DIGITAL TECHNOLOGIES,  
19 INC., and Defendants/Intervenors  
ARM LTD. and ARM INC.

20 Dated: July 10, 2012

MORRISON & FOERSTER LLP

21 By: /s/ Scott Moore  
Scott Moore

22 Attorneys for Defendant Sling Media, Inc.

23 Dated: July 10, 2012

KING & SPALDING

24  
25 By: /s/ Steven T. Snyder  
Steven T. Snyder

26 Attorneys for Defendants  
27 NOKIA CORP. and NOKIA INC.



**FILER'S ATTESTATION**

Pursuant to General Order No. 45, Section X, Subparagraph B, the undersigned attests that all parties have concurred in the filing of this SUPPLEMENTAL PROTECTIVE ORDER.

DATED: July 10, 2012

PEPPER HAMILTON LLP

By: /s/ Matthew D. Durell  
Matthew D. Durell

PURSUANT TO STIPULATION IT IS SO ORDERED:

DATED: July 11, 2012



The Honorable Ronald M. Whyte

United States District Court Judge

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Nazomi Communications, Inc.,

Case No. 5:10-cv-4686-RMW

Plaintiff,

v.

Nokia Corp., et al.

Defendants.

Nazomi Communications, Inc.,

Case No. 5:10-cv-5545-RMW

Plaintiff,

v.

Samsung Telecommunications America, LLC,  
et al.

Defendants.

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND  
BY THE SUPPLEMENTAL PROTECTIVE ORDER GOVERNING  
DISCOVERY OF NON-PARTY ORACLE AMERICA, INC.'S MATERIAL**

I, \_\_\_\_\_ [print or type  
full name], state:

My business address is

\_\_\_\_\_;

1. My present employer is \_\_\_\_\_

2. My present occupation or job description is \_\_\_\_\_

3. I have been informed of and have reviewed the Supplemental Protective Order  
Governing Discovery Of Non-Party Oracle America, Inc.'s Material ("Supplemental Protective

Order) entered in this Litigation, and understand and agree to abide by its terms. I agree to keep confidential all information provided to me in the matters of *Nazomi Communications, Inc. v. Samsung Telecommunications America, LLC, et al.*, Case No. 5:10-cv-05545 RMW and *Nazomi Communications, Inc. v. Nokia Corp., et al.*, 5:10-cv-04686-RMW, in accordance with the restrictions in the Supplemental Protective Order, and to be subject to the authority of the United States District Court for the Northern District of California in the event of any violation or dispute related to this Supplemental Protective Order.

4. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on \_\_\_\_\_

\_\_\_\_\_  
[Printed name]

\_\_\_\_\_  
[Signature]

**EXHIBIT B**  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

Nazomi Communications, Inc.,  
  
Plaintiff,  
  
v.  
  
Nokia Corp., et al.  
  
Defendants.

Case No. 5:10-cv-4686-RMW

Nazomi Communications, Inc.,  
  
Plaintiff,  
  
v.  
  
Samsung Telecommunications America, LLC,  
et al.  
  
Defendants.

Case No. 5:10-cv-5545-RMW

**CERTIFICATION OF CONSULTANT**  
**RE SUPPLEMENTAL PROTECTIVE ORDER GOVERNING**  
**DISCOVERY OF NON-PARTY ORACLE AMERICA, INC.'S MATERIAL**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
\_\_\_\_\_ am not an employee of the Party who retained me or of a competitor  
of any Party or Oracle and will not use any information, documents, or things that are subject to  
the Supplemental Protective Order Governing Discovery Of Non-Party Oracle America, Inc.'s  
Material ("Designated Material") in the matters of *Nazomi Communications, Inc. v. Samsung*  
*Telecommunications America, LLC, et al.*, Case No. 5:10-cv-05545 RMW and *Nazomi*  
*Communications, Inc. v. Nokia Corp., et al.*, 5:10-cv-04686-RMW, to which I have access for any  
purpose other than this Litigation. I agree not to perform hardware or software development  
work or product development work directly or indirectly intended for commercial purposes

1 substantially related to the particular technology or information disclosed in the Designated  
 2 Material to which I have access, from the time of receipt of such material through and including  
 3 the first to occur of (i) the date I cease to represent the Receiving Party or respective client in this  
 4 case or (ii) the date I cease to have access to any material designated "ORACLE - OUTSIDE  
 5 ATTORNEYS' EYES ONLY" or "ORACLE - OUTSIDE ATTORNEYS' EYES ONLY -  
 6 SOURCE CODE." I understand that this shall not preclude me from consulting in future  
 7 litigation, so long as such consulting does not involve hardware or software development work  
 8 directly or indirectly intended for commercial purposes substantially related to the particular  
 9 technology or information in the Designated Material to which I have access.  
 10

11 I state under penalty of perjury under the laws of the United States of America that the  
 12 foregoing is true and correct.

13 Executed on \_\_\_\_\_  
 14

15 \_\_\_\_\_  
 [Printed name]

16 \_\_\_\_\_  
 17 [Signature]  
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